

## **TRANSMITTAL # 2**

### **MEMORANDUM**

**March 19, 2001**

**TO:** Workforce Development Council

**FROM:** Roger B. Madsen, Director

**SUBJECT:** Nondiscrimination and Equal Opportunity under the Workforce Investment Act

**ACTION REQUESTED:** Approve proposed policy related to nondiscrimination and equal opportunity

#### **BACKGROUND:**

As a condition to the award of financial assistance under Title I, WIA, the State has the obligation to establish and assure equal opportunity and to prohibit discrimination on the basis of race, color, religion, gender, national origin, age, disability, political affiliation or belief, and for program applicants and participants only, citizenship or participation in a WIA Title I financially assisted program or activity.

The proposed policy clarifies the application of the nondiscrimination and equal opportunity provisions under WIA and provides procedures for implementing them. As specified in the implementing regulations, the proposed policy applies to recipients of funds under Title I of WIA, including service providers and One Stop Operators.

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Attachment

# **Nondiscrimination/Equal Opportunity Policy**

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# **NONDISCRIMINATION/EQUAL OPPORTUNITY POLICY**

## **I. PURPOSE**

The Idaho Department of Labor, as the State Administrative Entity, establishes this policy to clarify the application of the nondiscrimination and equal opportunity provisions of the Workforce Investment Act of 1998 (WIA), and to provide uniform procedures for implementing them.

## **II. ASSURANCES**

As a condition to the award of financial assistance from the U.S. Department of Labor under Title I of WIA, WIA Recipients, Service Providers and One Stop Operators assure that they will comply fully with the nondiscrimination and equal opportunity provisions of the following laws: Section 188 of WIA, which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and discrimination against beneficiaries on the basis of either citizenship or status as a lawfully admitted immigrant authorized to work in the United States or participation in any WIA Title I financially assisted program or activity; Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color and national origin; Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities; The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; and Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in educational programs.

WIA Recipients, Service Providers and One Stop Operators also assure that they will comply with 29 CFR part 37 and all other regulations implementing the laws listed above. This assurance applies to the WIA Recipients' operation of the WIA Title I financially assisted program or activity, and to all agreements WIA Recipients make to carry out the WIA Title I financially assisted program or activity. WIA Recipients understand that the United States has the right to seek judicial enforcement of this assurance.

## **III. DEFINITIONS**

*Aid, benefits, services, or training* means WIA Title I financially assisted services, financial or other aid, or benefits provided by or through a WIA Recipient or its employees, or by others through contracts or other arrangements with the WIA Recipient. Aid, benefits, services, or training includes, but is not limited to, core and intensive services; education or training; health, welfare, housing, social service, rehabilitation, or other supportive services; work opportunities; and cash, loans, or other financial assistance to individuals. It also includes any aid, benefits, services, or training provided in or through a facility that has been constructed, expanded, altered, leased, rented, or otherwise obtained, in whole or in part, with Federal financial assistance under Title I of WIA.

*Applicant* means an individual who is interested in being considered for WIA Title I financially assisted aid, benefits, services, or training by a WIA Recipient, and who has signified that interest by submitting personal information in response to a request by the WIA Recipient.

*Auxiliary aids or services includes:*

1. Qualified interpreters, notetakers, transcription services, written materials, telephone handset amplifiers, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDDs/TTYs), videotext displays, or other effective means of making aurally delivered materials available to individuals with hearing impairments;
2. Qualified readers, taped texts, audio recordings, brailled materials, large print materials, or other effective means of making visually delivered materials available to individuals with visual impairments;
3. Acquisition or modification of equipment or devices; and
4. Other similar services and actions.

*Beneficiary* means the individual or individuals intended by Congress to receive aid, benefits, services, or training from a WIA Recipient.

*Disability* means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment. The phrase physical or mental impairment means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine body systems; any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

1. The phrase *physical or mental impairment* includes, but is not limited to, such contagious and noncontagious diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism. The phrase physical or mental impairment does not include homosexuality or bisexuality.

2. The phrase *major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

3. The phrase *has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

4. The phrase *is regarded as having an impairment* means:

- a. Has a physical or mental impairment that does not substantially limit major life activities but that is treated by the WIA Recipient, Service Provider or a One Stop Operator as being such a limitation;

- b. Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

- c. Does not have a physical or mental impairment, but is treated by the WIA Recipient, Service Provider or a One Stop Operator as having such an impairment.

of: 5. The phrase *individual with a disability* does not include an individual on the basis

a. Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

b. Compulsive gambling, kleptomania, or pyromania; or

c. Psychoactive substance use disorders resulting from current illegal use of drugs.

d. Current illegal use of drugs, when a WIA Recipient acts on the basis of such use. This limitation does not exclude as an individual with a disability an individual who:

(i) Has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(ii) Is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(iii) Is erroneously regarded as engaging in such use, but is not engaging in such use, except that it is not a violation of the nondiscrimination and equal opportunity provisions of WIA or this policy for a WIA Recipient to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (4)(a) or (4)(b) of this definition is no longer engaging in the illegal use of drugs.

6. With regard to employment, the phrase *individual with a disability* does not include any individual who:

a. Is an alcoholic:

(i) Whose current use of alcohol prevents such individual from performing the duties of the job in question, or

(ii) Whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others; or

b. Has a currently contagious disease or infection, if:

(i) That disease or infection prevents him or her from performing the duties of the job in question, or

(ii) His or her employment, because of that disease or infection, would constitute a direct threat to the health and safety of others.

*Employment practices* means a WIA Recipient, Service Provider or a One Stop Operator's practices related to employment, including, but not limited to, recruitment or recruitment advertising; the selection, placement, layoff or termination of employees; the upgrading, promotion, demotion or transfer of employees; training, including employment-related training; participation in upward mobility programs; deciding rates of pay or other forms of compensation; use of facilities; or deciding other terms, conditions, benefits and privileges of employment.

*Facility* means all or any portion of buildings, structures, sites, complexes, equipment, roads, walks, passageways, parking lots, rolling stock or other conveyances, or other real or personal property or interest in such property, including the site where the building, property, structure, or equipment is located. The phrase "real or personal property" in the preceding sentence includes indoor constructs that may or may not be permanently attached to a building or structure. Such constructs include, but are not limited to, office cubicles, computer kiosks, and similar constructs.

*Fundamental alteration*, means a change in the essential nature of a program or activity as defined in this part, including but not limited to an aid, service, benefit, or training; or a cost that a WIA Recipient, Service Provider or a One Stop Operator can demonstrate would result in an undue burden. Factors to be considered in making the determination whether the cost of a modification would result in such an undue burden include:

1. The nature and net cost of the modification needed, taking into consideration the availability of tax credits, deductions, and outside financial assistance for the modification;

2. The overall financial resources of the facility involved in the provision of the modification, including:

a. The number of persons aided, benefited, served, or trained by, or employed at, the facility; and

- b. The effect the modification would have on the expenses and resources of the facility;
- 3. The overall financial resources of the WIA Recipient, including:
  - a. The overall size of the WIA Recipient;
  - b. The number of persons aided, benefited, served, trained, or employed by the WIA Recipient; and
  - c. The number, type and location of the WIA Recipient's facilities;
- 4. The type of operation or operations of the WIA Recipient, including:
  - a. The geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the WIA Recipient; and
  - b. Where the modification sought is employment-related, the composition, structure and functions of the workforce; and
- 5. The impact of the modification upon the operation of the facility, including:
  - a. The impact on the ability of other participants to receive aid, benefits, services, or training, or of other employees to perform their duties; and
  - b. The impact on the facility's ability to carry out its mission.

*Participant* means an individual who has been determined to be eligible to participate in, and who is receiving aid, benefits, services or training under, a program or activity funded in whole or in part under Title I of WIA.

*Prohibited ground* means race, color, religion, sex, national origin, age, political affiliation or belief, and for beneficiaries only, citizenship or participation in any WIA Title I financially assisted program or activity.

*Qualified individual with a disability* means:

- 1. With respect to employment, an individual with a disability who, with or without reasonable accommodation, is capable of performing the essential functions of the job in question;
- 2. With respect to aid, benefits, services, or training, an individual with a disability who, with or without reasonable accommodation and/or reasonable modification, meets the essential eligibility requirements for the receipt of such aid, benefits, services, or training.

*Reasonable accommodation* means:

- 1. Modifications or adjustments to an application/registration process that enables a qualified applicant/registrant with a disability to be considered for the aid, benefits, services, training, or employment that the qualified applicant/registrant desires; or
- 2. Modifications or adjustments that enable a qualified individual with a disability to perform the essential functions of a job, or to receive aid, benefits, services, or training equal to

that provided to qualified individuals without disabilities. These modifications or adjustments may be made to:

- a. The environment where work is performed or aid, benefits, services, or training are given; or
- b. The customary manner in which, or circumstances under which, a job is performed or aid, benefits, services, or training are given; or

3. Modifications or adjustments that enable a qualified individual with a disability to enjoy the same benefits and privileges of the aid, benefits, services, training, or employment as are enjoyed by other similarly situated individuals without disabilities.

*Reasonable accommodation* includes, but is not limited to:

1. Making existing facilities used by applicants, registrants, eligible applicants/registrants, participants, applicants for employment, and employees readily accessible to and usable by individuals with disabilities; and
2. Restructuring of a job or a service, or of the way in which aid, benefits, or training are provided; part-time or modified work or training schedules; acquisition or modification of equipment or devices; appropriate adjustment or modifications of examinations, training materials, or policies; the provision of readers or interpreters; and other similar accommodations for individuals with disabilities.

*Service provider* means:

1. Any operator of, or provider of aid, benefits, services, or training to:
  - a. Any WIA Title I—funded program or activity that receives financial assistance from or through any State or LWIA grant recipient; or
  - b. Any participant through that participant's Individual Training Account; or
2. Any entity that is selected and/or certified as an eligible provider of training services to participants.

*Undue hardship*, with respect to reasonable accommodations of individuals with disabilities, means significant difficulty or expense incurred by a WIA Recipient, when considered in light of the following factors:

1. The nature and net cost of the accommodation needed, taking into consideration the availability of tax credits, deductions and outside funding for the accommodation;
2. The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, including:
  - a. The number of persons aided, benefited, served, or trained by, or employed at, the facility, and



- b. The effect the accommodation would have on the expenses and resources of the facility;
- 3. The overall financial resources of the WIA Recipient, including:
  - a. The overall size of the WIA Recipient,
  - b. The number of persons aided, benefited, served, trained, or employed by the WIA Recipient, and
  - c. The number, type and location of the WIA Recipient's facilities;
- 4. The type of operation or operations of the WIA Recipient, including:
  - a. The geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the WIA Recipient, and
  - b. Where the individual is seeking an employment-related accommodation, the composition, structure and functions of the WIA Recipient's workforce; and
- 5. The impact of the accommodation upon the operation of the facility, including:
  - a. The impact on the ability of other participants to receive aid, benefits, services, or training, or of other employees to perform their duties, and
  - b. The impact on the facility's ability to carry out its mission.

#### **IV. DISCRIMINATION PROHIBITED**

No individual may, on a prohibited ground, be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any WIA Title I funded program or activity.

#### **V. SPECIFIC DISCRIMINATORY ACTIONS BASED ON PROHIBITED GROUNDS OTHER THAN DISABILITY PROHIBITED**

A WIA Recipient must not, directly or through contractual, licensing, or other arrangements, on a prohibited ground other than disability:

- 1. Deny an individual any aid, benefits, services, or training provided under a WIA Title I funded program or activity;
- 2. Provide to an individual any aid, benefits, services, or training that is different, or is provided in a different manner, from that provided to others under a WIA Title I funded program or activity;
- 3. Subject an individual to segregation or separate treatment in any matter related to his or her receipt of any aid, benefits, services, or training under a WIA Title I funded program or activity;
- 4. Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any aid, benefits, services, or training under a WIA Title I funded program or activity;

5. Treat an individual differently from others in determining whether he or she satisfies any admission, enrollment, eligibility, membership, or other requirement or condition for any aid, benefits, services, or training provided under a WIA Title I funded program or activity;

6. Deny or limit an individual with respect to any opportunity to participate in a WIA Title I funded program or activity, or afford him or her an opportunity to do so that is different from the opportunity afforded others under a WIA Title I funded program or activity;

7. Deny an individual the opportunity to participate as a member of a planning or advisory body that is an integral part of the WIA Title I funded program or activity; or

8. Otherwise limit on a prohibited ground an individual in enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any WIA Title I financially assisted aid, benefits, services, or training.

9. Aid or perpetuate discrimination by providing significant assistance to an agency, organization, or person that discriminates on a prohibited ground in providing any aid, benefits, services, or training to registrants, applicants or participants in a WIA Title I funded program or activity; or

10. Refuse to accommodate an individual's religious practices or beliefs, unless to do so would result in an additional, unusual cost, other than de minimis costs, that a particular accommodation would impose upon a WIA Recipient.

In determining, either directly or through contractual, licensing, or other arrangements, the types of aid, benefits, services, training or facilities that will be provided, the class of individuals to whom such aid, benefits, services, training or facilities will be provided, the situations in which such aid, benefits, services, training or facilities will be provided, or the location of facilities, WIA Recipients may not use standards, procedures, criteria or administrative methods that have the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination on a prohibited ground, or defeating or substantially impairing, on a prohibited ground, accomplishment of the objectives of the WIA Title I funded program or activity, or the nondiscrimination and equal opportunity provisions of WIA.

WIA Recipients must not permit participants to be employed or trained in sectarian activities. This prohibition shall apply to any facility that is, or will be, primarily or inherently devoted to sectarian instruction or religious worship. A WIA Recipient must not permit participants to be employed or trained in any way to construct any part of such a facility, operate any part of such a facility, or maintain any part of such a facility. If a facility is not primarily or inherently devoted to sectarian instruction or religious worship, a WIA Recipient may permit the use of WIA Title I funds to employ participants to maintain the facility, if the organization that operates the facility is part of a program or activity that provides services to participants.

## **VI. SPECIFIC DISCRIMINATORY ACTIONS BASED ON DISABILITY PROHIBITED**

In providing any aid, benefits, services, or training under a WIA Title I financially assisted program or activity, a WIA Recipient must not, directly or through contractual, licensing, or other arrangements, on the ground of disability:

1. Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefits, services, or training;
2. Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefits, services, or training that is not equal to that afforded others;
3. Provide a qualified individual with a disability with an aid, benefit, service or training that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;
4. Provide different, segregated, or separate aid, benefits, services, or training to individuals with disabilities, or to any class of individuals with disabilities, unless such action is necessary to provide qualified individuals with disabilities with aid, benefits, services or training that are as effective as those provided to others;
5. Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards; or
6. Otherwise limit a qualified individual with a disability in enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, service or training.
7. Aid or perpetuate discrimination against qualified individuals with disabilities by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefits, services or training to registrants, applicants, or participants.
8. Deny a qualified individual with a disability the opportunity to participate in WIA Title I financially assisted programs or activities despite the existence of permissibly separate or different programs or activities.
9. Use standards, procedures, criteria, or administrative methods that have the purpose or effect of subjecting qualified individuals with disabilities to discrimination on the ground of disability, that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the WIA Title I financially assisted program or activity with respect to individuals with disabilities, or that perpetuate the discrimination of another entity if both entities are subject to common administrative control or are agencies of the same state.
10. In determining the site or location of facilities, make selections that have the purpose or effect of, on the basis of disability, excluding individuals from, denying them the benefits of, or subjecting them to discrimination, or defeating or substantially impairing the accomplishment of disability-related objectives of the WIA Title I funded program or activity, or the nondiscrimination and equal opportunity provisions of WIA.
11. Use criteria in the selection of contractors that subject qualified individuals with disabilities to discrimination on the basis of disability.

WIA Recipients must administer WIA Title I financially assisted programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

WIA Recipients must not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, nor establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability.

WIA Recipients must not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any aid, benefit, service, training, program, or activity, unless such criteria can be shown to be necessary for the provision of the aid, benefit, service, training, program, or activity being offered.

WIA Recipients must not place a surcharge on a particular individual with a disability, or any group of individuals with disabilities, to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual or group with the nondiscriminatory treatment required by WIA Title I.

WIA Recipients must not exclude, or otherwise deny equal aid, benefits, services, training, programs, or activities to, an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

## **VII. REASONABLE ACCOMMODATIONS FOR INDIVIDUALS WITH DISABILITIES**

With regard to aid, benefits, services, training, and employment, a WIA Recipient must provide reasonable accommodation to qualified individuals with disabilities who are applicants, registrants, eligible applicants/registrants, participants, employees, or applicants for employment, unless providing the accommodation would cause undue hardship. See the definitions of reasonable accommodation and undue hardship.

To determine the appropriate reasonable accommodation, it may be necessary for the WIA Recipient to initiate an informal, interactive process with the qualified individual with a disability in need of the accommodation. This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations.

### *Undue Hardship*

In those circumstances where a WIA Recipient believes that the proposed accommodation would cause undue hardship, the WIA Recipient has the burden of proving that the accommodation would result in such hardship.

The WIA Recipient must make the decision that the accommodation would cause such hardship only after considering all factors listed in the definition of undue hardship. The decision must be accompanied by a written statement of the WIA Recipient's reasons for reaching that conclusion. The WIA Recipient must provide a copy of the statement of reasons to the individual or individuals that requested the accommodation.

If a requested accommodation would result in undue hardship, the WIA Recipient must take any other action that would not result in such hardship, but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the aid, benefits, services, training, or employment provided by the WIA Recipient.

### *Reasonable Modifications*

A WIA Recipient must also make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless making the modifications would fundamentally alter the nature of the service, program, or activity. See the definition of fundamental alteration.

In those circumstances where a WIA Recipient believes that the proposed modification would fundamentally alter the program, activity, or service, the WIA Recipient has the burden of proving that the modification would result in such an alteration.

The WIA Recipient must make the decision that the modification would result in such an alteration only after considering all factors listed in the definition of fundamental alteration. The decision must be accompanied by a written statement of the WIA Recipient's reasons for reaching that conclusion. The WIA Recipient must provide a copy of the statement of reasons to the individual or individuals that requested the modification.

If a modification would result in a fundamental alteration, the WIA Recipient must take any other action that would not result in such an alteration, but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the aid, benefits, services, training, or employment provided by the WIA Recipient.

## **VIII. COMMUNICATIONS WITH INDIVIDUALS WITH DISABILITIES**

WIA Recipients must take appropriate steps to ensure that communications with beneficiaries, registrants, applicants, eligible applicants/registrants, participants, applicants for employment, employees, and members of the public who are individuals with disabilities, are as effective as communications with others.

A WIA Recipient must furnish appropriate auxiliary aids or services where necessary to afford individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, the WIA Title I financially assisted program or activity. In determining what type of auxiliary aid or service is appropriate and necessary, the WIA Recipient must give primary consideration to the requests of the individual with a disability.

Where a WIA Recipient communicates by telephone with beneficiaries, registrants, applicants, eligible applicants/registrants, participants, applicants for employment, and/or employees, the WIA Recipient must use telecommunications devices for individuals with hearing impairments (TDDs/TTYs), or equally effective communications systems, such as telephone relay services.

A WIA Recipient must ensure that interested individuals, including individuals with visual or hearing impairments, can obtain information as to the existence and location of accessible services, activities, and facilities.

A WIA Recipient must provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The

signage provided must meet the most current standards prescribed by the General Services Administration under the Architectural Barriers Act at 41 CFR 101-19.6. Alternative standards for the signage may be adopted when it is clearly evident that such alternative standards provide equivalent or greater access to the information. The international symbol for accessibility must be used at each primary entrance of an accessible facility.

### *Fundamental Alteration*

WIA Recipients must take action to ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the WIA Recipient. However, a WIA Recipient is not required to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity. See the definition of a fundamental alteration.

1. In those circumstances where a WIA Recipient believes that the proposed action would fundamentally alter the WIA Title I financially assisted program, activity, or service, the WIA Recipient has the burden of proving that compliance with this section would result in such an alteration.

2. The decision that compliance would result in such an alteration must be made by the WIA Recipient after considering all resources available for use in the funding and operation of the WIA Title I financially assisted program, activity, or service, and must be accompanied by a written statement of the reasons for reaching that conclusion.

3. If an action required to comply with this section would result in a fundamental alteration, the WIA Recipient must take any other action that would not result in such an alteration, but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the WIA Recipient.

## **IX. EMPLOYMENT PRACTICES**

Discrimination on the ground of race, color, religion, sex, national origin, age, disability, or political affiliation or belief is prohibited in employment practices in the administration of, or in connection with any WIA Title I financially assisted program or activity; and any program or activity that is part of the One-Stop delivery system and is operated by a One-Stop partner listed in Section 121(b) of WIA, to the extent that the program or activity is being conducted as part of the One-Stop delivery system.

The employment practices of WIA Recipients must also comply with the following regulations:

1. The Equal Employment Opportunity Commission's (EEOC's) Uniform Guidelines on Employee Selection Procedures, 41 CFR part 60-3.

2. 29 CFR part 32, subparts B and C and Appendix A, which implement the requirements of Section 504 of the Rehabilitation Act of 1973, as amended, pertaining to employment practices and employment-related training, program accessibility, and reasonable accommodation.

3. Titles I and II of the ADA for WIA Recipients that are also employers, employment agencies, or other entities covered by those titles. See 29 CFR part 1630 and 28 CFR part 35.

4. The anti-discrimination provision of the Immigration and Nationality Act for WIA Recipients that are employers covered by those provisions. See 8 U.S.C. 1324b, as amended.

5. All consistent State and local requirements.

## **X. INTIMIDATION AND RETALIATION PROHIBITED**

WIA Recipients must not discharge, intimidate, retaliate, threaten, coerce or discriminate against any individual because the individual has filed a complaint alleging a violation of Section 188 of WIA; opposed a practice prohibited by the nondiscrimination and equal opportunity provisions of WIA; or furnished information to, or assisted or participated in any manner in, an investigation, review, hearing, or any other activity related to the administration of the nondiscrimination and equal opportunity provisions of WIA, the exercise of authority under those provisions, or the exercise of privilege secured by those provisions; or otherwise exercised any rights and privileges under the nondiscrimination and equal opportunity provisions of WIA or this part.

The sanctions and penalties contained in Section 188(b) of WIA or in the nondiscrimination and equal opportunity provisions of WIA may be imposed against any WIA Recipient that engages in any such retaliation or intimidation, or fails to take appropriate steps to prevent such activity.

## **XI. NOTICES AND COMMUNICATIONS**

WIA Recipients must provide initial and continuing notice that it does not discriminate on any prohibited ground. This notice must be provided to registrants, applicants, and eligible applicants/registrants; participants; applicants for employment and employees; unions or professional organizations that hold collective bargaining or professional agreements with the WIA Recipient; subrecipients that receive WIA Title I funds from the WIA Recipient; and members of the public, including those with impaired vision or hearing. The initial notice must be provided within 90 days of the date the entity first becomes a WIA Recipient.

### **A. The notice must contain the following specific wording:**

#### **Equal Opportunity Is the Law**

It is against the law for this recipient of Federal financial assistance to discriminate on the following bases: Against any individual in the United States, on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief; and against any beneficiary of programs financially assisted under Title I of the Workforce Investment Act of 1998 (WIA), on the basis of the beneficiary's citizenship/status as a lawfully admitted immigrant authorized to work in the United States, or his or her participation in any WIA Title I financially assisted program or activity.

The recipient must not discriminate in any of the following areas:

Deciding who will be admitted, or have access, to any WIA Title I financially assisted program or activity; providing opportunities in, or treating any person with regard to, such a program or activity; or making employment decisions in the administration of, or in connection with, such a program or activity.

### **What To Do If You Believe You Have Experienced Discrimination**

If you think that you have been subjected to discrimination under a WIA Title I financially assisted program or activity, you may file a complaint within 180 days from the date of the alleged violation with either:

The recipient's Equal Opportunity Officer (or the person whom the recipient has designated for this purpose); or The Director, Civil Rights Center (CRC), U.S. Department of Labor, 200 Constitution Avenue NW, Room N-4123, Washington, DC 20210.

If you file your complaint with the recipient, you must wait either until the recipient issues a written Notice of Final Action, or until 90 days have passed (whichever is sooner), before filing with the Civil Rights Center (see address above).

If the recipient does not give you a written Notice of Final

Action within 90 days of the day on which you filed your complaint, you do not have to wait for the recipient to issue that Notice before filing a complaint with CRC. However, you must file your CRC complaint within 30 days of the 90-day deadline (in other words, within 120 days after the day on which you filed your complaint with the recipient).

If the recipient does give you a written Notice of Final Action on your complaint, but you are dissatisfied with the decision or resolution, you may file a complaint with CRC. You must file your CRC complaint within 30 days of the date on which you received the Notice of Final Action.

At a minimum, this notice must be posted prominently, in reasonable numbers and places; disseminated in internal memoranda and other written or electronic communications; included in handbooks or manuals; and made available to each participant, and made part of each participant's file.

This notice must be provided in appropriate formats to individuals with visual impairments. Where notice has been given in an alternate format to a participant with a visual impairment, a record that such notice has been given must be made a part of the participant's file.

#### *Notice in Publications, Broadcasts and Other Communications*

WIA Recipients must indicate that the WIA Title I financially assisted program or activity in question is an "equal opportunity employer/program," and that "auxiliary aids and services are available upon request to individuals with disabilities," in recruitment brochures and other materials that are ordinarily distributed or communicated in written and/or oral form,



electronically and/or on paper, to staff, clients, or the public at large, to describe programs financially assisted under Title I of WIA or the requirements for participation by WIA Recipients and participants. Where such materials indicate that the WIA Recipient may be reached by telephone, the materials must state the telephone number of the TDD/TTY or relay service used by the WIA Recipient.

WIA Recipients that publish or broadcast program information in the news media must ensure that such publications and broadcasts state that the WIA Title I-financially assisted program or activity in question is an equal opportunity employer/program (or otherwise indicate that discrimination in the WIA Title I financially assisted program or activity is prohibited by Federal law), and indicate that auxiliary aids and services are available upon request to individuals with disabilities.

WIA Recipients must not communicate any information that suggests, by text or illustration, that the WIA Recipient treats beneficiaries, registrants, applicants, participants, employees or applicants for employment differently on any prohibited ground except as such treatment is otherwise permitted under Federal law or regulations.

## **B. Communication During Orientation**

WIA Recipients, during each presentation to orient new participants, new employees, and/or the general public to WIA Title I financially assisted programs or activities, must include a discussion of rights under the nondiscrimination and equal opportunity provisions of WIA, including the right to file a complaint of discrimination with the WIA Recipient or the Director of the Civil Rights Center of the U.S. Department of Labor.

## **C. In Languages Other Than English**

A significant number or proportion of the population eligible to be served, or likely to be directly affected, by a WIA Title I financially assisted program or activity may need services or information in a language other than English in order to be effectively informed about, or able to participate in, the program or activity. Where such a significant number or proportion exists, a WIA Recipient must take the following actions:

- a. Consider the scope of the program or activity, and the size and concentration of the population that needs services or information in a language other than English; and
- b. Based on those considerations, take reasonable steps to provide services and information in appropriate languages. This information must include the initial and continuing notice of nondiscrimination required under this section and all information that is communicated in publications, broadcasts, and other communications.

In circumstances where there is not a significant proportion of the population who needs service or information in a language other than English, WIA Recipients should nonetheless make reasonable efforts to meet the particularized language needs of limited-English-speaking individuals who seek services or information from the WIA Recipient.

## **XII. OUTREACH AND EQUITABLE SERVICES**

WIA Recipients must take appropriate steps to ensure that they are providing universal access to their WIA Title I financially assisted programs and activities. These steps should involve reasonable efforts to include members of both sexes, various racial and ethnic groups, individuals with disabilities, and individuals in differing age groups. Such efforts may include, but are not limited to, advertising the WIA Recipient's programs and activities in media, such as newspapers or radio programs, that specifically target various populations; sending notices about openings in the WIA Recipient's programs and activities to schools or community service groups that serve various populations; and consulting with appropriate community service groups about ways in which the WIA Recipient may improve its outreach and service to various populations.

## **XIII. METHODS OF ADMINISTRATION**

The Governor has established Methods of Administration for the operation of WIA Title I financially assisted programs or activities to give reasonable guarantee that WIA Recipients will comply, and are complying, with the nondiscrimination and equal opportunity provisions of the laws listed above. Procedures contained in the Methods of Administration are incorporated by reference into this Nondiscrimination/Equal Opportunity Policy.

WIA Recipients will promptly notify the Director of the Civil Rights Center, U.S. Department of Labor, 200 Constitution Ave. NW, Room N-4123, Washington D.C. 20210, and the EO Officer, Idaho Department of Labor, 317 W. Main Street, Boise, Idaho 83735, of any administrative enforcement action or lawsuit filed against them alleging prohibited discrimination.

## **XIV. SEXUAL HARASSMENT POLICY**

It is the policy of Idaho Department of Labor to absolutely forbid the sexual harassment of any WIA employee, participant, eligible applicant/recipient or applicant. Additionally, a person who is qualified for but denied an employment or training benefit because of another's submission to sexual harassment is protected by this policy.

Unwelcome sexual advances, requests for sexual favors, and other verbal and physical conduct of a sexual nature, constitute sexual harassment when:

Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or participation in a training program; or

Submission to or rejection of such conduct by an individual is used as the basis for decision affecting that individual's status as an employee or as a participant in a training program.

Such conduct has the purpose or effect of unreasonably interfering with an individual's performance as an employee or as a participant in a training program, or creating an intimidating, hostile, or offensive work or training environment.

The WIA State Administrative Entity has designated the Human Resource/Equal Opportunity Officer of the Idaho Department of Labor as the official responsible for receiving and

investigating complaints of sexual harassment. Any supervisor, manager, employee or participant who is made aware of an alleged incident of sexual harassment will take immediate action to bring the matter to the attention of the Human Resource/Equal Opportunity Officer who will take action pursuant to this policy.

Any participant who feels he/she has been the victim of such unwelcome advances may file a complaint as outlined below. Due to the sensitivities associated with complaints of sexual harassment, any person or step normally part of the complaint procedure may be bypassed if the complainant feels it is necessary to do so.

1. Bring the matter to the attention of his/her immediate supervisor and continue the complaint procedure; or
2. File a complaint directly with the Human Resource/Equal Opportunity Officer, Idaho Department of Labor, 317 W. Main, Boise, ID 83735; or
3. If he/she so chooses, the participant may bypass the WIA complaint procedure entirely and file a sex discrimination claim directly with the Idaho Human Rights Commission and/or the Director, Civil Rights Center, USDOL, 200 Constitution Ave. NW, Washington DC 20210.